



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC MISC. APPL. NO. 5 OF 2019

ABDI RASHID MUKWANA.....1ST PLAINTIFF

SAMUEL SIMIYU WANGATIA.....2ND PLAINTIFF

JUDITH WANJIRO WACHIRA (Suing as Office Bearers of

MULIRO MARKET KAMUKUNJI.....3RD PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF TRANS-NZOIA.....1ST DEFENDANT

G.H. TANNA & SONS LTD.....2ND DEFENDANT

RULING

1. The applicant filed an application dated 27/2/2019 seeking orders:-

(1) That the application be certified urgent.

(2) That this honourable court be ordered to transfer of the Kitale Chief Magistrate land Case No. 75 of 2018 to Kitale ELC court for hearing and disposal.

(3) That the costs of the application be in the cause.

2. This Application is premised on several grounds which appear at the foot of the application and in the supporting affidavit of the 1st applicant sworn on 27/2/2019. Briefly they are that the 2nd respondent has come on board the suit before the Chief Magistrates court and it is apparent that the new claim touchers of the ownership of the land whereas the claim between the applicants and the 1st respondent in the same suit was initially to prevent demolition of the property; that the value of the suit property exceeds the pecuniary jurisdiction of the magistrate's court; that there is a related matter **Kitale ELC No. 64 of 2011**; that the issues raised directly if this litigation affects the applicants as they are involved in both and therefore the decision thereof should be made by this court.

3. The sworn replying affidavit sworn by David Nyakango Onyancha was filed 8/3/2019 in opposition to the application. In that affidavit the deponent avers that he handles this matter on behalf of the 2nd respondent, that this court has no jurisdiction to determine this application, that the jurisdiction is an issue that should have been raised in the magistrate's court; that the applicants have not the value of the suit land herein; that the applicants instituted the lower court suit they now seek to transfer and the issues in **Kitale ELC No. 64 of 2011** are all res judicata and no appeal was filed by any party to challenge the judgment that vested the ownership of the suit land in the 2nd respondent

4. On 13/3/2019 when this matter came up before me I ordered that the subordinate court file be attached to this file record and be brought up for consideration as a ruling on the instant application is being prepared.

5. However I have examined the application dated 27/2/2019 and the supporting affidavit I find that this matter concerns two plots whose value is not given in the application before me. I have also noticed that in the circumstances obtaining the subordinate court is capable of hearing and determining this matter. I am therefore of the view that no proper justification has been given for proposal to have the suit before the lower court transferred to this court for hearing and final determination.

6. For those reasons the application dated 27/2/2019 is hereby dismissed with costs. The lower court file shall be returned to that court forthwith for hearing and determination.

Dated, signed and delivered at Kitale on this 27th day of March, 2019.

MWANGI NJOROGE

JUDGE

27/03/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Onyancha for the 2nd defendant/respondent

Mr. Karani for applicants/plaintiffs

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

27/03/2019